THE Pundit

Michigan Child Support Information

*Friends of the court processed 41,712 stipulations in 2000.*

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## Jackson County Friend of the Court

### and the Use of Credit Cards to Collect Child Support

In effort to continue improving their child support collection program, the Jackson County Friend of the Court recently implemented a program that would allow non-custodial parents to pay their child support by using credit cards. After nearly a year of negotiations with Government Payment Services (GPS), and with full approval of the Jackson County Board of Commissioners, the credit card program began on June 1, 2001.

Jackson County Friend of the Court, Andy Crisenbery perceives the new program as another example of the determined effort by the Jackson County Friend of the Court Staff to pursue innovative methods to increase child support collections. According to Mr. Criesenbery, "I am confident that this program will become another valuable tool in our very successful enforcement program."

To use the system, child support payers call a toll free number and provide the GRS clerk with the required case related information. The 5 percent convenience fee is paid to GPS by the child support payer. The friend of the court is notified about the transaction by fax transmittal. GPS is responsible for any problems, such as the use of a stolen credit card, or the payer disputing the charge.

GPS has contracts with government agencies nationwide providing consumer child support credit card payment services. GPS will accept Visa, American Express, Master Card, Discover, and Diners Club International. In 2000, GPS processed approximately $10 million in transactions, and an additional $7 million throughout the first six months of 2001.

Since the program was implemented by the Jackson County Friend of the Court, the office has processed nearly $50,000.00 in child support payments through the use of credit cards. The enforcement team uses every opportunity to advise clients of the availability of the credit card program. The program has been most beneficial to the bench warrant staff. The staff now has greater opportunities to negotiate agreements with child support payers that have been arrested in cities that are a great distance from Jackson, Michigan.

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# Innovative Programs in Other States

The Federal Office of Child Support Enforcement awards "Best Practices and Good Ideas in Child Support Enforcement." The state of Rhode Island was recognized for its, "Child Support Lien Network." The goal of the Rhode Island program was to create a national web-enabled network seamless to state child support agencies and other users of the system in order to intercept insurance claim settlements before payments were sent to child support payers who owed child support arrears.

**Description of the program:**

The State of Rhode Island and Providence Plantations (RI) established the Child Support Lien Network (CSLN) in 1999 under a 1998 Federal OCSE Special Improvement Project (SIP) grant to extract data from each delinquent child support payer. The data was then entered into one accessible, easy-to-use database.

Using the database and a method called **Internet look-up** via the website, insurance adjusters can determine if a claimant owes past due child support by entering claimant information on the website. If there is a match between a claimant and a child support payer, the CSLN automatically notifies the child support agency electronically. After the child support agency takes the appropriate action to place a lien on, freeze or seize the settlement, the insurer forwards the past-due amount to the appropriate child support collection agency.

**Results:**

In the first one and a half years, procedures requiring insurers to use the internet look up, resulted in new collections of $1.8 million. In addition to the almost $2 million collected, the system identified 1,200 open insurance claims matched to 135, 000 delinquent cases. It is projected that the system could be even more useful for collecting child support from payers residing outside the state of Rhode Island. Eight states were tested using a history of the past 6 ½ years of insurance claims and delinquent cases. It was projected that the system could have collected $896 million if it had been implemented seven years ago.

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## . . . Use of Credit Cards to Collect Child Support

The staff can now wave the bench warrant by telephone, rather than transporting the child support payer back to Jackson County.

In the future more friend of the court offices may be implementing credit card programs for the payment of child support.

If you have any questions about the GPS program you may contact Tom McCarty at (888) 561-7888 ext. 322.

# Demographics and the Friend of the Court Office

There are many factors that influence the number and types of cases at the friend of the court office. Some of the those factors are attributed to the changing demographics of this country. There was recently a report released by Federal Interagency Forum on Child and Family Statistics. Using the data that was available the authors provided projections for the population and family characteristics. The following is a summary of those projections which highlights the demographics that would have the greatest influence on the friend of the court caseloads.

*"In 2000, 69 percent of American children lived with two parents whereas in 1980 it was 77 percent."*

**Populations of children under the age of 18 in the United States:**
It is projected the population of children will raise from 70.4 million in 2000 to 77 million in 2020. In 2000, children made up 26 percent of the population. Children are projected to remain a fairly stable percentage of the total population. It is projected that children will comprise 24 percent of the population in 2020.

**Children living in one parent vs two parent homes:**
According to the report, the number of parents living with a child is generally linked to the amount and quality of human and economic resources available to that child. Children living in a one parent household are more likely to have family incomes below the poverty level than are children who live in a household with two parents. In 2000, 69 percent of American children lived with two parents whereas in 1980 it was 77 percent. Since 1996, the number of children living with only one parent has not changed significantly.

**Births to unmarried women:**
In 1999, 33 percent of all births were to unmarried women. The percentage of all births to unmarried women rose sharply from 18 percent in 1980 to 33 percent in 1994. Between 1980 and 1994, the birth rate for unmarried women ages 15 to 44 increased from 29 to 47 per 1,000.

**Child Care:**
In 1999, 54 percent (close to 20 million) of children from birth through third grade received some form of child care on a regular basis from persons other than their parents. In 1995, 51 percent of the children through third grade received child care. According to the article the type of the child care received was related to the age of the child. For example, 41 percent of children from birth through age two were more likely to be in home based care. Whereas children ages three to six who were not yet in kindergarten are more likely to be in a center based child care arrangement. Sixty percent of these children were in a center based care.

To view the entire report, you may go to: http://childstats.gov/ac2001/poptxt.asp

# Uniform Interstate Family Support Act

To meet the requirements of the Uniform Interstate Family Support Act (UIFSA) the appropriate procedures must be used. The following UIFSA Forms Matrix provides a basic description of the forms and their purpose.

*"To meet the requirements of the Uniform Interstate Family Support Act . . . the appropriate procedures must be used."*

| To Request | Send the following forms | Other Items |
|---|---|---|
| Establishment of paternity and support | Child Support Enforcement Transmittal #1 - Initial Request<br>Uniform Support Petition<br>Affidavit in Support of Establishing Paternity<br>General Testimony | Birth Certificates<br>Affidavit of Parentage |
| Establishment of a support order | Child Support Enforcement Transmittal #1 - Initial Request<br>Birth Certificates<br>Uniform Support Petition<br>General Testimony | Marriage Certificates |
| Modification of existing responding State order | Child Support Enforcement Transmittal #1 - Initial Request<br>Uniform Support Petition<br>General Testimony | |
| Modification of existing order that the responding state did not issue. [Registration for Modification and Enforcement] | Child Support Enforcement Transmittal #1 - Initial Request<br>Uniform Support Petition<br>General Testimony including Arrears affidavit/calculation<br>Registration Statement (one per order) | Copy of Current and Prior Support Orders |
| Enforcement of existing responding State order | Child Support Enforcement Transmittal #1 - Initial Request | |
| Enforcement of existing order that the responding state did not issue. [Registration for Modification and Enforcement] | Child Support Enforcement Transmittal #1 - Initial Request<br>General Testimony (Arrears affidavit/calculation only)<br>Registration Statement | Copy of Current and Prior Support Orders |

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The complete UIFSA Act can be found at:
http://www.michiganlegislature.org/mileg.asp?page=getObject&objName=mcl-Act-310-of-1996

There are other websites that will provide information about the UIFSA:

**Training:**
http://ocse.acf.dhhs.gov/necsrspub/search/search.asp?order=S&x=043&y=035&agency=ALL

**Federal Regulations**:
http://www.access.gpo.gov/nara/cfr/waisidx_01/45cfr303_01.html
303.7 are about interstate
303.11 include special interstate case closure provisions

**National on Line Referral Guide:**
http://ocse3.acf.dhhs.gov/ext/irg/sps/selectastate.cfm

**Current Approved Interstate Forms:**
http://www.acf.dhhs.gov/grograms/cse/pol/at-00-11.htm

**Income Withholding Form:**
http://www.acf.dhhs.gov/grograms/cse/pol/at-01-07.htm

**Lien and Subpoena Interstate Forms:**
http://www.acf.dhhs.gov/grograms/cse/pol/at-01-06.htm

We hope you find this information about the UIFSA helpful. The Pundit will continue to provide information about the enforcement and collection of child support as well as issues regarding custody and parenting time.

## Case in Brief

**In *Macomb Co DSS v Westerman*, ___Mich App___; ___NW2d___(2002), the court of appeals clarified the requirements for a non-modifiable settlement agreement for child support.**

Ms. Roberts was receiving state assistance for the benefit of her child. In 1986, the Macomb County Department of Social Services (MCDSS) filed a paternity action on her behalf against Mr. Westerman. In a 1989 settlement, Mr. Westerman acknowledged paternity and agreed to pay past support.

At the time of the settlement, Ms. Roberts was anticipating marriage (to a different person) and Mr. Westerman agreed to consent to an anticipated adoption by Ms. Roberts' future husband. Mr. Westerman also agreed to provide an annuity for the child. In consideration, it was agreed that Mr. Westerman "shall not be liable for future support or maintenance regarding the minor child, and that the defendant shall have no further obligations, financial, support, medical expenses, maintenance or otherwise, to the minor child or any of the parties hereto, except as provided for in this Judgment." After the consent judgment was entered, Ms. Roberts got married and Mr. Westerman performed all of the requirements detailed in the judgment. However, Ms. Roberts' marriage was not successful, and she and her husband divorced without the adoption occurring.

In 1991, Ms. Roberts again began to receive public assistance for the child and, in 1992, the MCDSS brought an action against the Mr. Westerman for support and restitution. At trial, the Mr. Westerman referred to his prior non-modifiable agreement which, at the time it was entered, was allowable under MCL722.713(b) [repealed effective June 1, 1997]. The trial court granted summary judgment for the Mr. Westerman.

Ms. Roberts filed a 1999 motion to rescind the consent judgment under MCR 2.612(C)(1)(f). The court denied the motion and indicated that Mr. Westerman had completely performed his obligations. MCDSS appealed.

On appeal, MCDSS argued that the statute, which allowed the non-modifiable agreement to be entered, had since been declared unconstitutional and repealed. The court, however, did not dwell on this argument; rather, the court focused on another aspect of the case.

The court cited standards set in *Crego v Coleman*, 463 Mich 248; 615 NW2d 218 (2000), as to when a non-modifiable settlement agreement is binding. The court noted that under *Crego's* standards non-modifiable child support was allowed under the former MCL 722.713 only where paternity was uncertain and the parties entered an agreement regarding child support, in lieu of a judicial determination of paternity.

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*Crego* further stated that "once a putative father has acknowledged paternity, his child is entitled to fully modifiable support just as any other child whose paternity has been ascertained." *Id*, at 276. In accordance, the *Westerman* court determined that parties may not have a non-modifiable settlement agreement as to support where a defendant has acknowledged paternity.

The *Westerman* court reversed the trial court finding that a non-modifiable settlement may be entered when a putative father acknowledges paternity. Mr. Westerman acknowledged paternity prior to the settlement and, therefore, the court found the support to be modifiable.

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**The court of appeals in *DeRose v DeRose*, ___Mich App___; ___NW2d___(2002), declared Michigan's grandparent visitation statute, MCL 722.27b, to be unconstitutional.**

The divorce proceeding between the DeRoses contained an admission by Joseph DeRose that he had abused Theresa DeRose's daughter (his stepdaughter). Theresa DeRose was granted custody of the only child born during the marriage. While the case was pending, Joseph DeRose's mother filed a petition for grandparent visitation. Theresa DeRose was opposed to the visitation because the grandmother had previously denied that her son had abused Theresa DeRose's older daughter. The trial court granted the grandmother's petition, essentially stating that "Grandmothers are very important." This ruling was consistent with the recommendation of the Wayne County Friend of the Court. Theresa DeRose appealed, alleging that the grandparenting time statute was unconstitutional.

In ruling for Theresa DeRose and declaring the statute unconstitutional, the court discussed, and distinguished, this case from *Troxel v Grandville*, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000), in which the United States Supreme Court held the Washington grandparent visitation statute unconstitutional as a violation of fundamental parental rights under the constitution.

The court of appeals stated that the Michigan grandparenting statute is more limited in scope than the Washington statute in that it defines the circumstances under which a grandparent may petition for visitation ( i.e. when there is a pending custody matter before the court or when one of the parents is deceased). The court also said that Michigan's statute has similarities to Washington's statute in that it allows, and in fact mandates under MCL 722.27b(3), a judge to enter a visitation order if the judge believes it to be in the best interest of the child.

The court distinguished the facts of this case from *Troxe*l. There was no parental abuse alleged in *Troxel* by either party. The court said that this was important because a parent is assumed to be acting in the best interest of their child unless the parent is

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determined to be unfit. In this case, there was an admission by Mr. Joseph DeRose that he had abused Theresa DeRose's oldest child and there was no evidence that Theresa DeRose was abusive or unfit. The court, quoting *Troxel*, stated that "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made." *DeRose* at slip opinion, p 4.

Simply stated, Theresa DeRose, a fit parent, did not want her child to visit her paternal grandmother, and the judge had a different opinion as to what was in the best interest of the child. The court stated that "if a judge in Washington cannot constitutionally be vested with the discretion to grant visitation to a non-parent based upon a finding that it is in the child's best interests to do so, then a judge in Michigan cannot be obligated under statute to do so based upon the same finding." *DeRose* at slip opinion, p 4.

The court stated that "While Michigan's statute is certainly narrower in scope than Washington's in terms of standing to file a visitation petition, the Michigan statute is not narrower once a petition is properly before the trial court, it is precisely this lack of legislative guidance that renders the statute fatally flawed." In vacating the trial court order, the court stated that rewriting the grandparent visitation statute "is a task best left for the Legislature."

## Capitol Corner

Since the last publication of the Pundit was distributed, two house bills were introduced, and one House Bill became a public act.

**Public Act 195 (formerly House Bill 4855), effective April 1, 2002** replaces the Uniform Child Custody Jurisdiction Act (UCCJA) with the new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA adds interstate civil enforcement for child custody orders.

**Features of the UCCJEA:**

- The UCCJEA requires that any state that is not the home state of the child will defer to the home state, if there is one, in taking jurisdiction over a child custody dispute.

- Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with justification for jurisdiction.

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- The UCCJEA also adds enforcement provisions to the jurisdictional provisions. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially to the act. An order from a state that has continuing exclusive jurisdiction will be enforced.

- If more than one state could modify an order, the UCCJEA establishes rules for taking jurisdiction and that discourage competing child custody orders.

**House Bill 5545** would create the Marriage and Fatherhood Commission in the Legislative Council. The bill was referred to the House Committee Family and Children Services, was reported with recommendation and substitute, and referred for a second reading. The Commission would consist of three members appointed by the President of the Senate; three members appointed by the Speaker of the House; three members appointed by the Governor; and three members appointed by the Chief of staff of the Michigan Supreme Court. Among other things the Commission would:

- Recommend resources for child support responsibilities.

- Identify resources for parents or children of parents who are divorced or separated.

- Submit an annual report with recommendations that identifies specific state policies that impede positive family interaction (this Commission would not have authority to promulgate rules).

**House Bill 5575** has been introduced in the House and referred to the Committee on Family and Children Services. The bill would set forth conditions (including best interests factors listed in the bill) for the court to consider someone to be a "defacto custodian." Under this bill, if the court determines someone to be a defacto custodian, the court would make that person a party to the action. The defacto custodian could object to the parents agreeing to joint custody. If this occurs the court would have to make a determination based on the best interests of the child. If a de facto custodian is to share joint custody with one or both parents, the court would have to consider the de facto custodian in its determination of when the child would reside with each party, or when determining that physical custody be shared to ensure that the child continues contact with each parent and the de facto custodian.

# FYI

## Parenting Time and Custody Guidelines

Recently the State Court Administrative Office, Friend of the Court Bureau (SCAO, FOCB) forwarded to each county friend of the court office 50 copies of the Michigan Parenting Time Guideline and 25 copies of the Michigan Custody Guideline. Any one interested in obtaining copies of either one of the these documents may do so by contacting Darla Brandon at (517) 373-5975.

## Friend of the Court Manual

The SCAO is suspending maintenance of this Manual until further notice. Currently, the Manual contains selected Michigan Compiled Laws and Michigan Court Rules (Section 9) and the following separate publications:

Michigan Child Support Formula Manual (available electronically from the website)
Michigan Custody Investigation Model
Michigan Parenting Time/Domicile Investigation Model

The resources in Section 9 are available in the bound publications of the Michigan Compiled Laws and Michigan Court Rules and can also be accessed through the SCAO's website via the FOCB's home page at the following address:

http://courts.michigan.gov/scao/services/focb/legis.htm

The Friend of the Court Bureau and the Office of Child Support continue to discuss the development of policy and procedural information for inclusion in the Manual; however, nothing has been finalized.

## Reporting State Account Deposits

On December 14, 2001, the Office of Child Support (OCS) distributed an action transmittal which reminded FOCs of the proper time for completing and submitting reports for funds deposited into the county's state treasury account. OCS's concern centered around deposits which were not being reported until the end of the month, even though the deposits occurred earlier.

IV-D Action Transmittal 2001-041 states that the proper form, FIA-29 (Financial Deposit Report), must be submitted to the Family Independence Agency's Cashier Unit immediately after each deposit. One form must be submitted for each deposit; multiple deposits may not be indicated on the same form. Supreme Court policy normally requires deposits at least every two days. However, deposits should be made whenever the collection total reaches $1,000 and at least weekly. See Michigan Court Administration Reference Guide, Section 6-05(F)(7)(u).

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The action transmittal noted that failing to timely submit the forms can adversely affect incentive payments. TANF collections indentified from the FIA-29 are used to calculate the 10 percent monthly incentive payments to counties. Reports submitted at the end of the month sometimes are not received in time to have incentives calculated on the collections contained within them. As a consequence, incentive payment on those collections are delayed until the following month. Timely submitting the deposit reports not only complies with program requirements, but insures that incentives are paid to the county as early as possible.

## Foreign Protection Orders, Child Custody and Child Support

**Effective April 1, 2002** Public Act 206 became effective. This public act provides that a valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as if it were issued in this state. A child custody or child support provision within a valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as any provision within a personal protection order issued in this state.